

Section 1: The Risk Management Process in North Dakota

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1.1 Origin of the Risk Management Program

The North Dakota Legislature established a risk management program for all State agencies in its 1995 session.

This action was a result of a North Dakota Supreme Court decision that eliminated the State's sovereign immunity. In that ruling, the court held that the State, like individuals and private corporations, should be held responsible for the negligence of its agents and employees.

The risk management program was instituted to provide a coordinated process for ensuring that the State is properly protected against losses and has the appropriate procedures and mechanisms in place to handle claims and lawsuits.

The Office of Management and Budget (OMB) has overall responsibility for the risk management program. Each State agency has designated a risk management contact person to work with the program.

1.2 State of North Dakota Risk Management Division Mission and Policy Statements

Mission Statement

The mission of the Risk Management Division of the Office of Management and Budget is to protect the assets of the State of North Dakota — its people, property, and financial resources — so that the State can continue to meet its obligations to its citizens.

Policy Statement

The policy of the Risk Management Division is to use the risk management process. This process involves systematic risk assessment, risk control, risk financing, and administration of these activities. The most important of these components is the implementation of effective risk control programs, including ones focusing on employee and public safety, property and data protection, environmental safety, vehicle fleet safety, and security.

Through this process, the State will:

- Identify and measure the tort liability risks faced by its various agencies and operations.
- Implement appropriate measures to control these risks.
- Develop plans for financing these risks.
- Develop systems for effectively administering the program and monitoring results.

Transfer and Financing of Risk

The State, as it deems appropriate, will transfer or share tort liability risk with others (such as government insurance pools, commercial insurers, and contractors), or it will retain risk through deductibles, self-insurance, or special State funds. The criteria for making risk financing decisions will be the combination that minimizes the State's long-term "cost of risk"— the sum of retained losses, insurance premiums, risk control costs, and administrative costs.

1.3 Key Risk Management Program Partners and Their Roles

The State's key risk management program partners are:

- Office of Management and Budget
- The Risk Management Division
- Workforce Safety and Insurance
- State Fire & Tornado Fund
- State Bonding Fund
- Petroleum Tank Release Compensation Fund
- State Entities, Including Agencies, Departments, Boards, Commissions, and Institutions

Office of Management and Budget

The Office of Management and Budget has responsibility and authority for risk management under North Dakota Century Code Chapter 32-12.2, including administration of the State liability Risk Management Fund.

Administration of the risk management program — including the purchase of all liability insurance, consulting, claim management, and related services — will be carried out by this office.

The Risk Management Division

Tort Liability - The Risk Management Division staff addressing tort liability exposures consists of a director, a claims manager, a loss control analyst, and an administrative assistant.

State Employee Workers Compensation Program – Division staff also includes the manager of the Risk Management Workers Compensation Program (RMWCP). That program is further defined in Section 9 of this Manual.

The Division oversees the State's risk management process, coordinates insurance coverage and risk financing, manages claims, works with legal defense counsel, compiles and analyzes risk management data, and conducts risk management educational programs.

These activities take place within five broad areas: Risk Control and Risk Analysis (identifying and measuring exposures to loss); Risk Financing (negotiating

insurance); Claims Adjudication (adjusting claims), and Risk Administration (administering the State's response to lawsuits).

Identifying and Measuring Exposures

Division staff:

- Oversees the physical inspection of State facilities to identify potential for loss before it occurs.
- Reviews incident and claim forms to identify loss trends that indicate the need for employee training or to identify unsafe conditions.
- Proposes that contracts, leases, and agreements are properly drafted so that the State does not assume unnecessary liability for loss.
- Reviews new laws, regulations, and requirements to help State agencies and employees comply with established standards.
- Serves as a source of information for State employees on what regulations apply to work they are performing.
- Develops avenues of communication to help all State employees, including management, understand and support the State's risk management policy.
- Encourages State employees to communicate concerns about potential loss situations, such as unsafe conditions.

Risk Control

The Division staff selects methods of funding risks by making sure effective loss control practices are in place for retained risk, transferring risks by contracts when appropriate, and recommending the purchase of insurance when advisable.

Risk Financing and Risk Analysis

The Division staff helps state entities determine what insurance they need and how to obtain the best coverage at the most reasonable cost. Division staff reviews policy wording carefully to ensure it provides the required coverage.

Claims Adjudication

The Division staff:

- Ensures that claims reporting procedures are adequate and followed correctly, that claims are properly adjusted, and that reserves are frequently checked.
- Coordinates with the Attorney General's Office and the agency head in managing and settling claims.
- Establishes reporting procedures to keep agencies apprised of claim activity.
- Develops computer-based data storage and retrieval programs to meet reporting, reserving, and loss control requirements.

Risk Administration

In consultation with the Attorney General's Office, the Division staff hires the most competent attorneys to represent the State, its agencies and its employees, and monitors lawsuits to ensure efficient and cost-effective litigation.

State Entities

All State employees and officials have a critical role in the risk management process and loss control. This role includes such activities as establishing safe workplaces, following safe practices, limiting exposure to potential liability and loss, and carrying out the steps necessary to maintain effective and efficient risk management. Specific steps to take in processing claims and controlling losses are outlined in other sections of this manual.

The State looks to each of its officials and employees to support and follow the risk management process. Each State agency has designated a risk management contact person who will work with the Risk Management Division to implement the process in the agency.

SUMMARY OF STATE RISK FINANCING

RISK	DESCRIPTION	FINANCING SOURCE
Automobile Liability	Liability arising out of the use of State-owned or State-leased vehicles	As of July 1, 1997, State fleet vehicles are covered by the Risk Management Fund.
Rental Vehicles	Liability and comprehensive and collision coverage for vehicles rented for a period of thirty days or less when traveling on official state business.	While the Risk Management Fund provides coverage for this exposure, it is recommended that employees purchase liability and collision and comprehensive insurance from the rental company if renting the vehicle in other countries (Canada, Mexico) and in states other than the Midwest, Plains, and Mountain states.
Leased Vehicles	Liability, comprehensive and collision coverage for vehicles provided to athletic department employees by local dealers at no cost to the State	While the state employee is using the vehicle in the scope of his or her employment, the Risk Management Fund provides coverage. If the employee uses the vehicle for personnel travel, the coverage must be provided by the employee's private carrier. As with all state fleet vehicles, any passenger in the vehicle must be on official state business. If there is a passenger in the vehicle who is not on state business, the use will be determined not to be official state business and the private carrier's coverage will be primary.
Aviation Liability	Liability arising out of the use of State-owned or leased aircraft	Commercial insurance policy purchased by State agency.
Boiler & Machinery	Explosion or damage caused by steam boilers and related equipment	State Boiler Inspection Program (purchases master insurance policy).
Fidelity	Employee theft of funds	State Bonding Fund.
General Liability	Liability arising out of the State's premises or operations	The Risk Management Fund.
Medical Malpractice	Liability relating to professional medical services provided by State employees	The Risk Management Fund and purchased Professional Liability coverage
Petroleum Release	Cleanup costs for contamination from petroleum tank release	Petroleum Tank Release Compensation Fund.
Professional Liability	Liability relating to other professional services provided by State employees (e.g., counselors, social workers, attorneys, public officials, etc.)	The Risk Management Fund.
Property	Physical damage to State-owned buildings and contents	State Fire & Tornado Fund
Workers' Compensation	Employee injuries or illness relating to their jobs	Workforce Safety & Insurance